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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,722	02/14/2002	Emanuel Shenkar	CCK-0071	2102

21302 7590 02/19/2003

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,722

Applicant(s)

SHENKAR, EMANUEL

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means by which the J-hook is circumferentially compressed must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. See paragraphs 2-5 below, under 35 U.S.C. 112.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Further, regarding figure 1, it is unclear how the retention member is urged from its first molded position to the second position shown in dotted lines.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 15-19 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding Claim 1, it is unclear what the “efficacious molding position” comprises.

Regarding claims 15-19, it is unclear how the J-hook is urged from the first molded position to the second position where it engages the container for retention purposes. While

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means of applying a J-hook closure to a container are known to those having ordinary skill in the art, no disclosure is provided which clearly enables a new method of applying a J-hook (by circumferentially compressing the retention member) or specifies that the present application is applied to a container through methods already known to those having ordinary skill.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear what the “efficacious molding position” comprises, since the examiner was unable to locate such description in the specification or drawings and how this position effectively provides tamper evident packaging assurance.

Regarding claims 15-19, it is unclear how the J-hook is urged from the first molded position to the second position where it engages the container for retention purposes. While means of applying a J-hook closure to a container are known to those having ordinary skill in the art, no disclosure is provided which clearly enables a new method of applying a J-hook (by circumferentially compressing the retention member) or specifies that the present application is applied to a container through methods already known to those having ordinary skill.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly '913.

Kelly '913 discloses a Tamper-Indicating Closure, comprising a body portion 12a comprising a base and a downwardly depending sidewall portion 12, said tamper evident band comprising a main band portion 7, and a J-hook retention member 6 that includes, at least some of the retaining elements being constructed and arranged to engage a container to which the closure may be mounted in order to retain the tamper evident band on the container when the body portion is removed from the container, and a plurality of flexible web elements 13, the flexible web elements being sufficiently flexible to render the J-hook retention member circumferentially compressible from a first molded position (fig. 11) wherein the retention member is positioned substantially beneath and in alignment with the main band portion of the tamper evident band to a second engaged position wherein the retention member is bent upwardly and inwardly to engage the container for retention purposes (fig. 1), whereby the closure may be manufactured in an efficacious molding position while still providing effective tamper evident packaging assurance, wherein each of the flexible web elements are interposed between an adjacent two of the retaining elements, wherein each of the retaining elements is constructed and arranged to engage the container for retention purposes, wherein at least one of the flexible web elements is shaped so as to have a predetermined crease line about which the web element will begin to fold as the J-hook retention member is circumferentially compressed, wherein the flexible web element is shaped so that the predetermined crease line is positioned radially inward from the nearest retaining element, whereby the flexible web element will be

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caused to fold radially inwardly as the J-hook retention member is circumferentially compressed, wherein the retaining elements are tapered in their circumferential dimensions so as to narrow at distal ends thereof that are distal to the body portion of the closure, wherein the flexible web elements are inversely tapered with respect to the retaining elements;

Further comprising a method of applying a tamper evident closure of the J-hook type, comprising steps of providing a container having an opening, providing a closure of the type including a base, a downwardly depending sidewall portion and a tamper evident band frangibly connected to the sidewall portion that includes a main band portion and a J-hook retention member that includes a plurality of retaining elements and a plurality of flexible web elements, the retention member being oriented in a first molded position wherein it is positioned substantially beneath and in alignment with the main band portion of the tamper evident band, and installing the closure onto the container so that the retention member is circumferentially compressed and is moved to a second engaged position wherein the retention member is bend upwardly and inwardly to engage the container for retention purposes (see col. 4-5, lines 66-68 continuing to lines 1-13).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 6-8, 11-14, and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly '913 as applied above under 35 U.S.C. 102(b) to claims 1-5, 9, 10 and 15 and in view of Taber et al. '443.

With respect to claims 6-8 and 20, Kelly '913 does not disclose ventilation openings disposed in the upper portion of a plurality of the flexible web elements.

Taber et al. '443 disclose it is known to provide a plurality of drain openings in the upper portion of the retention member/tamper band and discloses their benefit of facilitating the discharge of moisture during the processing of a container on col. 5, lines 19-22.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide drain openings in the upper portion of the retention member so as to obtain the benefit of facilitation the discharge of moisture during the processing of the container.

With respect to claims 11-14 and 16-19, Kelly '913 discloses the claimed invention except for the angles by which the longitudinal axis of the retention member can deviate from the longitudinal axis of the downwardly depending skirt and except for the percentage of circumferential compression allowed by the flexibility of the web elements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the flexibility and angle of the web elements/retention member for efficient and effective operation, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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Conclusion

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, “should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners”, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant’s benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125

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Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

jns
February 10, 2003


NATHAN J. NEWHOUSE
PRIMARY EXAMINER